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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,676	09/28/2001	Brendan Traw	42390P11771	4988

8791 7590 03/02/2007

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EXAMINER	
HUYNH, SON P	
ART UNIT	**PAPER NUMBER**
2623	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/966,676	TRAW ET AL.	
	Examiner	Art Unit	
	Son P. Huynh	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *03* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,7-12,18-23 and 29-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,7-12,18-23 and 29-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 December 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 7-12, 18-23, 29-32 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's argument that the combination of Labeeb and Barrett does not teach or suggest the limitations of Applicant's amended independent claims 1, 12, and 23 generally rated to: rating previously broadcasted data files in response to a content rating.... (page 10, paragraph 3), the Examiner respectfully disagrees.

The combination of Labeeb and Barrett teaches or suggests the limitations of Applicant's amended independent claims 1, 12, and 23 as discussed under 103 rejection below.

Applicant's arguments regarding rejection of claims 23, 29-32 Under 35 U.S.C § 101 have been fully considered but they are not persuasive.

Applicant argues ...when a computer program is claimed in a process where the computer is executing the computer program's instruction, the USPTO personnel should treat the claim as a process claim..... Claim 23 directed to a machine-readable medium having instructions stored thereon which when executed by a processor, cause..." (see page 7, last paragraph – page 8, paragraph 2). This argument is respectfully traversed.

Pages 52-53 of the interim guidelines stated that a computer readable medium encoded with a data structure/a computer program is a computer element which defines structural and functional interrelationships between the data structure and the computer software and hardware component..., and is thus statutory.

Claim 23 recites "a machine-readable medium having instructions stored thereon, **which when** executed by a processor..." is directed to a non-statutory subject matter because the functions **only** be performed only **when** the instructions is executed by the processor. Therefore, the "machine-readable medium having instructions stored thereon, which when executed..." does not necessarily define any structural and functional interrelationships between the computer program and other claimed elements of a computer (e.g. processor) which permit the computer program's functionality to be realized.

In addition, page 9, lines 1-3 of the specification also defines the term "machine readable medium" shall be taken to include carrier wave signals.
Pages 55-56 of the interim guidelines indicates all signal claims are nonstatutory.

For the reasons given above, the rejections of claims 23, 29-32 Under 35 U.S.C § 101 are properly applied.

Claims 2-6, 13-17, and 24-28 have been canceled.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 23, 29-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Pages 52-53 of the interim guidelines stated that a computer readable medium encoded with a data structure/a computer program is a computer element which defines structural and functional interrelationships between the data structure and the computer software and hardware component..., and is thus statutory.

Claim 23 recites "a machine-readable medium having instructions stored thereon, **which when** executed by a processor..." is directed to a non-statutory subject matter because the functions **only** be performed only **when** the instructions is executed by the processor. Therefore, the "machine-readable medium having instructions stored thereon, which when executed..." does not necessarily define any structural and functional interrelationships between the computer program and other claimed elements of a computer (e.g. processor) which permit the computer program's functionality to be realized.

In addition, page 9, lines 1-3 of the specification also defines the term "machine readable medium" shall be taken to include carrier wave signals.

Pages 55-56 of the interim guidelines indicates all signal claims are nonstatutory.

Claim 23 recites limitation "a machine-readable medium having instructions stored thereon, which when executed by a process cause the processor to:" should be replaced as – a computer readable medium encoded with computer-executable instructions being executed by a processor cause the processor to: --

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 7-12, 18-23, 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labeeb et al. (US 2003/0093792) in view of Barrett et al. (US 6,005,597).

Regarding claim 1, Labeeb discloses a method, comprising:

receiving meta-data broadcast by a server system, the meta-data including descriptions of a plurality of data files currently being broadcasted or to be broadcasted

by the server system (e.g. receiving "attribute information"/program information and the schedule of the television programs broadcast by the broadcast head end, the "attribute information" including program title, channel, category, start time, duration, etc. plurality of data files currently being broadcasted or to be broadcasted by the broadcast head end – see including, but are not limited to, figure 43, paragraphs 0049-0051,0074);

rating previously broadcasted data files in response to user's preferences/profile in personal reference database (e.g., rating stored programs (previously broadcasted programs) to determine which one to be maintained in the storage device and which one to be deleted from the storage device- overwriting stored program with the lowest rating first – see include, but is not limited to, paragraph 0154, figure 25);

storing previously broadcasted data files meeting a pre-determined ranking threshold in a storage device to create a plurality of stored data files (e.g. storing/recording the broadcasted program according to user selections or according to predetermined conditions in user preferences/profile– see include, but is not limited to, paragraphs 0104, 0111, 0152-0154);

Labeeb further discloses ratings all programs stored on storage devices with lowest rating, most preferable program (see include, but is not limited to, paragraph 0154). Thus, it is inherent that the rankings of the plurality of stored data files are compared to determine a best stored data file so that the stored programs are ranked/rated as most preferable program/lowest rating programs – wherein the "best stored data file" is interpreted as most preferable stored program.

Labeeb also discloses:

rating currently broadcasted data files in response to the user preference/profile in personal reference database (see include, but is not limited to, 0152-0155, 0227, 0233);

comparing the rankings of currently broadcasted data files to determine a best currently broadcasted data file (e.g. sorting through incoming program content and displaying best program at the top of the "top ten" lists, or program having attribute information rated highest by preference database to be presented first – see include, but is not limited to, paragraphs 0155, 0233);

selecting the best currently broadcasted data file or best stored data file with the highest ranking (e.g., selecting/sorting the currently broadcast program having attribute information rated highest by reference database to be presented first/ or to be displayed first on "top 10" list – see include, but is not limited to, paragraphs 0155, 0233); and

displaying the selected best currently broadcasted or stored data file automatically on a personalized channel on a display device (automatically displaying the selected currently broadcast program/or stored program on desired channel which is selected by the user or selected according to personal preference database, on a display device – i.e. television monitor 108 – figures 1, 43, paragraphs 0049, 0053, 0067, 0091, 0155, 0158, 0227, 0233, 0243). However, Labeeb does not explicitly disclose the content rating in personal reference database 116 is stored as table.

Barrett, in an analogous art, discloses monitoring the viewing preferences of the viewer to create a dynamic viewing profile that is used to rate available program, wherein the content rating is stored as content rating table in viewing profile (see

including, but are not limited to, figure 3, col. 2, lines 16-43, col. 4, line 28-col. 5, line 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Labeeb to use the teaching as taught by Barrett in order to at least allow the data in the viewer profile to be managed easily.

Regarding claim 7, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 1. Labeeb further discloses a currently broadcasted data file is an immediate viewing data file and is automatically selected (broadly interpreted as automatically select currently broadcast television program (i.e. Seinfeld episode)/news on NBC channel, or any program the user actually watched, etc.– see including, but are not limited to, figures 9A-9c, paragraphs 0049, 0087, 0098, 0158, 0228).

Regarding claim 8, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 7. Labeeb further discloses if an immediate viewing data file is not selected then a stored data file is selected (broadly interpreted as user change the channel from currently broadcast television program to recorded program - see including, but are not limited to, paragraphs 0049, 0158, figure 43).

Regarding claim 9, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 8. Labeeb further discloses if neither an immediate viewing data file or a stored data file is selected, then a best currently broadcasted data file with the highest ranking is selected (e.g. broadly interpreted as if neither currently broadcast program

(i.e. Seinfeld or NEWS program on the NBC channel, actually watch program, etc.) is not selected (for example, the Seinfeld or NEWS program on the NBC channel is not currently available), or a stored data file is selected, then currently broadcast program/data file having attribute information rated highest by preference database to be selected – see including, but are not limited to, paragraphs 0085-0087, 0091, 0093, 0152-0153, 0155, 0227, 0233).

Regarding claim 10, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 9. Labeeb further discloses the selected data file on a personalized channel on a display device (as a result of user selection of desired channel, the program/content on the selected channel is displayed on a display device such as television monitor 108 – see include, but is not limited to, paragraphs 0049, 0053, 0232, figures 1, 43)

Regarding claim 11, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 1. Labeeb further discloses the plurality of data files comprises at least one of video information, graphical information, audio information, multimedia information, or textual information (i.e. at least one of television video content, audio content, attribute information, or program guide information – paragraphs 0049, 0051, 0091, 0102, 0199, 0228, 0232).

Regarding claim 12, the limitations of the apparatus as claimed correspond to the limitations of the method as claimed in claim 1, and are analyzed as discussed with respect to the rejection of claim 1. Wherein claimed "processor..." is met by the preferences agent 110 and program source switch; the claimed "communication interface..." is met by interface to the network (i.e. tuner circuitry) that communicate with the network for receiving attribute information/program information from the broadcast headend; apparatus must comprises a storage device (i.e. ROM, RAM, etc.,) coupled to processor, the storage device having a sequence of instructions stored therein (i.e. software programs/applications) so that when executed by the processor cause the processor to perform the functions as discussed in the rejection of claim 1 (see including, but are not limited to, figures 34, 43-44, paragraphs 0149, 0152, 0204-0210, 0232-0243).

Regarding claims 13, 18-22, the additional limitations of the apparatus as claimed correspond to the additional limitations of the method as claimed in claims 7-11, and are analyzed as discussed with respect to the rejections of claims 2-11.

Regarding claims 23, 29-32, the limitations as claimed are directed toward embodying the method of claims 1, 7-10 in "machine-readable medium". It would have been obvious to embody the procedures of Labeeb in view of Barrett as discussed with respect to claims 1, 7-10 in a "machine-readable medium" in order that the instructions could be automatically performed by a processor

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ellis et al. (US 2003/0149988 A1) discloses client server based interactive television program guide system with remote server recording.

Niijima et al. (US 5,926,230) discloses electrical program guide system and method.

Connelly (US 7,167,895) discloses signaling method and apparatus to provide content on demand in a broadcast system.

Maissel et al. (US 6,637,029) discloses intelligent electronic program guide.

Payton (US 5,790,935) discloses virtual on demand digital information delivery system and method.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son P. Huynh February 23, 2007

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